

## Employment and Training Administration, Labor

## § 655.10

(c) A job contractor will only be permitted to seek certification if it can demonstrate through documentation its own temporary need, not that of its employer-client(s). A job contractor will only be permitted to file applications based on a seasonal need or a one-time occurrence.

[77 FR 10148, Feb. 21, 2012]

### § 655.7 Persons and entities authorized to file.

(a) *Persons authorized to file.* In addition to the employer applicant, a request for an *H-2B Registration* or an *Application for Temporary Employment Certification* may be filed by an attorney or agent, as defined in § 655.5.

(b) *Employer's signature required.* Regardless of whether the employer is represented by an attorney or agent, the employer is required to sign the *H-2B Registration* and *Application for Temporary Employment Certification* and all documentation submitted to the Department.

[77 FR 10151, Feb. 21, 2012]

### § 655.8 Requirements for agents.

An agent filing an *Application for Temporary Employment Certification* on behalf of an employer must provide:

(a) A copy of the agent agreement or other document demonstrating the agent's authority to represent the employer; and

(b) A copy of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Farm Labor Contractor Certificate of Registration, if the agent is required under MSPA, at 29 U.S.C. 1801 *et seq.*, to have such a certificate, identifying the specific farm labor contracting activities the agent is authorized to perform.

[77 FR 10151, Feb. 21, 2012]

### § 655.9 Disclosure of foreign worker recruitment.

(a) The employer, and its attorney or agent, as applicable, must provide a copy of all agreements with any agent or recruiter whom it engages or plans to engage in the international recruitment of H-2B workers under this *Application for Temporary Employment Certification*. These agreements must contain

the contractual prohibition against charging fees as set forth in § 655.20(p).

(b) The employer, and its attorney or agent, as applicable, must also provide the identity and location of all persons and entities hired by or working for the recruiter or agent referenced in paragraph (a) of this section, and any of the agents or employees of those persons and entities, to recruit prospective foreign workers for the H-2B job opportunities offered by the employer.

(c) The Department will maintain a publicly available list of agents and recruiters who are party to the agreements referenced in paragraph (a) of this section, as well as the persons and entities referenced in paragraph (b) of this section and the locations in which they are operating.

[77 FR 10151, Feb. 21, 2012]

## PREFILING PROCEDURES

### § 655.10 Determination of prevailing wage for temporary labor certification purposes.

(a) *Offered wage.* The employer must advertise the position to all potential workers at a wage at least equal to the prevailing wage obtained from the NPWC, or the Federal, State or local minimum wage, whichever is highest. The employer must offer and pay this wage (or higher) to both its H-2B workers and its workers in corresponding employment. The issuance of a PWD under this section does not permit an employer to pay a wage lower than the highest wage required by any applicable Federal, State or local law.

(b) *Determinations.* Prevailing wages shall be determined as follows:

(1) Except as provided in paragraph (e) of this section, if the job opportunity is covered by a collective bargaining agreement (CBA) that was negotiated at arms' length between the union and the employer, the wage rate set forth in the CBA is considered as not adversely affecting the wages of U.S. workers, that is, it is considered the "prevailing wage" for labor certification purposes.

(2) If the job opportunity is not covered by a CBA, the prevailing wage for labor certification purposes shall be